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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

ADMINISTRATIVE EXPENSES. The debtor was a ranch partnership with almost 1600 co-owners. The debtor's Chapter 11 plan called for the forced sale of the co-owners' interests. An association of the co-owners engaged legal counsel for the co-owners. The co-owners' counsel filed a motion for the creation of a creditors' committee formed of co-owners or, in the alternative, for attorney's fees and costs as administrative expenses. The court held that the co-owners were not creditors of the debtor and that the services provided by the co-owners' counsel did not benefit the bankruptcy estate; therefore, no attorney's fees or costs would be allowed as administrative expenses. ***In re* Warner Springs Partnership, 193 B.R. 28 (Bankr. S.D. Cal. 1995)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

ASSESSMENT. The debtors filed for Chapter 13 and objected to claims for taxes filed by the IRS, arguing that the debtors were not taxpayers or subject to the federal income tax laws (a form of tax protester argument). The court rejected the argument as frivolous. The debtors also argued that the assessment was not valid because the notice was merely a computer printed form without a signature from an agent. The court also rejected this argument, holding that the statute and regulations do not require a signature on an assessment notice. ***In re* Hopkins, 192 B.R. 760 (D. Nev. 1995)**.

AUTOMATIC STAY. After the debtor filed for Chapter 7, the IRS sent the debtor a Notice of Proposed Assessment of an I.R.C. § 6672 penalty as a responsible person in a corporation which failed to pay employee taxes. The IRS argued that the Notice did not amount to an assessment or attempt to collect the penalty. The court noted, however, that the Notice threatened collection if the debtor did not pay the penalty or file a protest within 30 days, and the court held that the Notice was an assessment of a penalty in violation of the automatic stay. The court also held that actions which violated the automatic stay were void *ab initio*; therefore, the IRS penalty assessment was void. **Riley v. United States, 192 B.R. 727 (E.D. Mo. 1995)**.

The debtors filed for Chapter 13 on February 16, 1993 and on May 17, 1993, the IRS assessed the debtors for taxes owed for 1974 through 1982. The trustee and debtors argued that the assessment was void for violation of the automatic stay and the IRS sought retroactive relief from the stay. The court held that the retroactive relief would be denied because the IRS had notice of the bankruptcy filing and had made several similar assessments in other cases, indicating a disrespect for the bankruptcy rules. ***In re* Murray, 193 B.R. 20 (Bankr. E.D. Cal. 1996)**.

DISCHARGE. The IRS assessed the debtor for 1980-1982 taxes in August 1993. The debtor filed for Chapter 7 193 days later and received a discharge in June 1994. A second bankruptcy case was filed in August 1994 but that was dismissed in October 1994. The debtor filed the current case in September 12, 1995 and argued that the 1980-1982 taxes were no longer entitled to a priority under Section 507(a)(8)(A)(ii) because more than 240 days had passed since the assessment. The IRS argued that Section 108(c) and I.R.C. §§ 6503(b), (h) tolled the 240 period during the previous bankruptcy cases. The court held that the plain language of Section 507(a)(8)(A)(ii) limits any suspension of the 240 day period only where an offer in compromise is pending; therefore, the taxes were no longer entitled to priority status. ***In re* Macko, 193 B.R. 72 (Bankr. M.D. Fla. 1996)**.

TAX LIEN. The IRS had filed prepetition tax liens against the debtor's property which included exempt assets and a monthly government pension. The pension was payable only to the debtor, extinguished at the debtor's death and could not be assigned. The debtor argued that the IRS bankruptcy tax claim was secured only to the extent of the monthly pension amount because the pension terminated at the debtor's death. The IRS argued that the tax claim was secured to the extent of the payments receivable over the debtor's remaining life expectancy. The court found only cases agreeing with the IRS view and held that the tax claim was secured to the extent of the value of the payments over the debtor's remaining life expectancy. ***In re* Wesche, 193 B.R. 76 (Bankr. M.D. Fla. 1996)**.

CONTRACTS

ENTRUSTMENT. The defendant purchased two mating pairs of ostriches and boarded them with a neighboring farmer who had raised ostriches for six years and who had boarded other livestock for the defendant. The farmer sold the ostriches to the plaintiffs who left the birds with the farmer for breeding and boarding. A dispute arose as to the ownership of the birds kept by the farmer and the defendant removed several birds. The plaintiffs brought an action for replevin to recover the birds they had purchased. The court held that the plaintiffs had superior title to the birds under Iowa Code § 554.2403(2) in that they purchased them in good faith from the farmer whom the court found was a merchant of ostriches under Iowa Code § 554.2104(1). **Prenger v. Baker, 542 N.W.2d 805 (Iowa 1995)**.

IMPLIED WARRANTY-*ALM* § 13.02[2].* The plaintiff purchased nine ostriches from the defendants for use as breeders. The sales contract merely listed the birds to be sold and their purchase price. After the birds were delivered, the plaintiff discovered that several were in ill health. The plaintiff brought an action for breach of implied warranty of fitness for a particular purpose under Mo. Rev. Stat. § 400.2-315. The defendants argued that Mo. Rev. Stat. § 400.2-316(5) specifies that a seller of livestock is not liable for any breach of any implied warranty of fitness for a particular purpose unless the sales contract contains a written statement of the implied warranty. Prior to the transaction, Mo. Rev. Stat. § 277.020(1) defined livestock to include exotic animals. The statute was changed shortly after the transaction to include ostriches as livestock. The plaintiff argued that the change indicated that ostriches were not livestock before the change. However, the legislature also amended Mo. Rev. Stat. § 277.022 to include ostriches as livestock instead of as exotic animals. The court held that this change indicated that before the changes, ostriches were considered exotic animals which were considered livestock under Mo. Rev. Stat. § 400.2-316(5); therefore, the defendants were not liable for any implied warranty because the sales contract did not contain any written warranty of fitness for a particular purpose. **Surface v. Kelly, 912 S.W.2d 646 (Mo. Ct. App. 1995)**.

FARMER AS MERCHANT-*ALM* § 13.02[1].* The plaintiffs raised horses and purchased 275 bushels of feed corn from the defendant. The corn was tested for aflatoxin and was shown to be free of aflatoxin. After several of the plaintiffs' horses died, tests demonstrated that the horses died from leukoencephalomalacia which can result from ingestion of Fumonisin B-1 produced by Fusarium Monoliforme mold commonly found on corn. However, the Fumonisin B-1 is produced by the mold only if the corn is stored at high temperatures with 20 percent humidity. At the time of the corn sale, neither party was aware of the dangers of the mold; however, the defendant did dry the corn and store it in ventilated bins. The plaintiffs sued the defendant for breach of implied warranty of merchantability and under the Alabama Extended Manufacturer's Liability Doctrine (AEMLD). The court held that the defendant was not liable for any breach of implied warranty of merchantability because the defendant was not a merchant under the U.C.C. since the defendant made only occasional sales of corn. The court indicated that it felt that farmers generally are not considered merchants under the U.C.C. unless they perform additional marketing activities. The court also held that the defendant was not liable under the AEMLD because the defendant had no knowledge of the danger to horses presented by the mold and, therefore, had no opportunity to inspect the corn for presence of the toxin. **Huprich v. Bitto, 667 So.2d 685 (Ala. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

Federal Agriculture Improvement and Reform Act of 1996
by Neil E. Harl

CUT-OFF OF LOANS. The 1996 legislation revisited an amendment phasing out operating loans for long time borrowers. Under the 1992 law, if a borrower had obtained an operating loan for five or more years, or a guaranteed loan for 10 or more years, a loan was not to be made to the borrower after the fifth year occurring after October 28, 1992. The regulations interpreted the provision to mean that the borrower had five years of eligibility after October 18, 1992, and a year did not count if no operating loans were outstanding as of that year. 7 C.F.R. § 1941.17 (1995).

Under the 1996 rule, if a farmer or rancher, as of October 28, 1992, had received a direct or guaranteed operating loan during each of 10 or more previous years, the borrower is eligible to receive a *guaranteed* operating (but not a direct loan) during five additional years. **Act § 617**. Those five additional years run from October 28, 1992. ***Id***. If loans were outstanding during each of those years, it appears that time would run out for the borrower for even guaranteed loans on October 18, 1997. ***Id***.

As for farm ownership loans, the 1996 legislation provides that if, as of April 4, 1996, a farmer or rancher had a direct farm ownership loan outstanding for less than five years, a loan is not to be made after April 4, 2006. **Act § 601**. In the event a borrower had a direct farm ownership loan outstanding for five years or more, as of April 4, 1996, a loan is not to be made after April 4, 2001. ***Id***.

The 1996 law also specifies that direct operating loans are not to be made to a borrower who is delinquent on any direct or guaranteed loan. **Act § 648(b)**. This provision became effective on the date of enactment, April 4, 1996. **Act § 663**.

BRUCELLOSIS. The APHIS has adopted as final regulations adding Georgia to the list of brucellosis-free states. **61 F.R. 15305 (April 10, 1996)**.

HERBICIDE. See summary of case under Products Liability, *infra*. **Eide v. E.I. Du Pont de Nemours & Co., 542 N.W.2d 769 (S.D. 1996)**.

MEAT INSPECTION. The AMS has adopted as final regulations which change some certificate forms, remove two outdated official stamp imprints, and added three new official stamp imprints. **61 Fed. Reg. 11504 (March 21, 1996)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT-*ALM* § 10.05[2].* The Secretary of Agriculture has adopted as final regulations which provide for the adjudication of the issue of whether a person is "responsibly connected" with a commission merchant, dealer or broker in the same disciplinary proceedings against the commission merchant, dealer or broker. The regulations also provide that the adjudication be made by an Administrative Law Judge. **61 Fed. Reg. 11501 (March 21, 1996)**.

The AMS has adopted as final regulations adding oil-blanched frozen fruits and vegetables as commodities covered by PACA. 61 Fed. Reg. 13385 (March 27, 1996).

WHEAT AND FEED GRAINS. The CCC has adopted as final regulations which allow producers to extend maturing wheat, corn, grain sorghum, barley, oat and rye price support loans in times of abnormal marketing conditions. **61 Fed. Reg. 11514 (March 21, 1996)**.

FEDERAL ESTATE AND GIFT TAX

IRA. The decedent's will bequeathed estate property to the surviving spouse and established a trust for the surviving spouse funded by two IRAs owned by the decedent. The surviving spouse disclaimed the interest in the trust and the decedent's heirs disclaimed any remainder interest in the trust as well as any intestate interest in the decedent's estate. The IRAs, therefore, passed to the surviving spouse by intestate succession. The surviving spouse rolled over the two IRAs to an IRA owned by the spouse. The IRS ruled that the IRAs were not inherited IRAs and that the surviving spouse should not include the IRAs in gross income. **Ltr. Rul. 9615043, Jan. 17, 1996**.

VALUATION. The decedent's estate included a 78 percent interest in the common stock of a corporation which owned a 1300 acre ranch, a one-third interest in a closely-held corporation which owned wetlands used for hunting, and 41.8 percent of a liquidating trust. The court rejected the estate's liquidation valuation and comparative property valuation of the ranch and wetlands because the properties were not going to be sold and the comparable properties used were not sufficiently similar. The corporation was valued using the value of the corporation's assets less a 20 percent discount for lack of marketability, based on the nonliquid nature of the assets because the land was subject to state restrictions. The estate was allowed a 20 percent discount for a minority interest and a 15 percent discount for lack of marketability of the wetland, also because the land was subject to state restrictions. The value of the interest in the liquidating trust was discounted 10 percent for lack of marketability but the court did not allow any discount for a minority interest because minority interest holders were protected by the trustee's fiduciary duty. A supplemental ruling involved a stipulation which determined the effect on stock valuation of a loan from a related corporation. **Luton v. Comm'r, T.C. Memo. 1994-539, *supp. by* T.C. Memo. 1996-181**.

The decedent had received a life estate in a residence with the remainder passing to charitable organizations. When a maintenance trust began to run out of funds for maintaining the residence, the parties established a liquidating trust to sell the residence and personal property. The estate argued that the decedent's interest in the trust should have been discounted for the minority interest and the lack of marketability of the interest. The estate argued that the decedent's interest should be treated the same as a minority shareholder's interest in a corporation. The IRS argued that the trust was not a trade or business and that a buyer would be concerned only with the value of the delay in liquidating the trust assets before realizing the value of the decedent's interest in money. The court held that the liquidating trust interest could not be discounted for the same factors as a shareholder's interest but allowed the discount for the time delay in liquidating trust assets. **Estate of Casey v. Comm'r, T.C. Memo. 1996-156**.

FEDERAL INCOME TAXATION

IRS AUDIT GUIDELINES

In early December 1995, the IRS issued "Market Segment Specialization Program Paper on Grain Farmers." The 16 chapter publication was apparently written by IRS personnel in the Kansas District with little review above the District level.

Unfortunately, the publication contains numerous errors and misstatements. Inasmuch as the publication is in the hands of IRS examining agents, it is being cited in audits. Before reliance is placed on the information in the publication, the statements should be checked carefully.

Dr. Neil E. Harl has prepared a 10 page commentary on the publication, which has been forwarded to the IRS. For a copy of the commentary, send a SASE (55 cents postage) to The Agricultural Law Press, P.O. Box 50703, Eugene, OR 97405.

COOPERATIVES. The taxpayer was a state-wide tax-exempt agricultural cooperative which formed a second agricultural cooperative which operated on a state regional basis. The taxpayer provided educational and promotional services for the subsidiary cooperative. The court held that the fees received for the services were not unrelated business income to the taxpayer. **Ohio Farm Bureau Fed., Inc. v. Comm'r, 106 T.C. No. 11 (1996)**.

DEFINITION OF FARMING. The taxpayer fenced rural land and stocked the property with select wild deer for the purpose of managing the breeding and development of the deer to produce "trophy" deer, deer with larger antlers and bodies than normal wild deer. The taxpayer consulted an expert on deer to develop methods to accomplish those purposes. The taxpayer charged hunters for the right to hunt selected deer each year. The IRS ruled that the taxpayer's activities were farming for purposes of Treas. Reg. § 1.162-12. Query, whether the hunters' activities can be called hunting. **Ltr. Rul. 9615001, Oct. 17, 1995**.

HOBBY BUSINESS. The taxpayer operated a small metals reclamation business in a barn on a rural residential property provided by the taxpayer's parents. The taxpayer's spouse was employed elsewhere fulltime. Although the business generated several years of profit early on, the last seven years all had losses. The losses were due primarily to increased environmental regulations and their enforcement against the taxpayer's business. The taxpayer made some attempt to comply with the regulations. The court held that the business was not operated for profit in that the business suffered several years of losses, the environmental regulations made the business unlikely to ever be profitable, the taxpayer continued the business primarily for pleasure, the taxpayer had other sources of income from the spouse's wages and the free use of the residence and barn, and the taxpayer made no attempt to change the business to make it more profitable. **Massingill v. Comm'r, T.C. Memo. 1996-162**.

INVOLUNTARY CONVERSION. The taxpayer's business involved raising ornamental plants which produced cuttings for resale. The taxpayer purchased a pesticide which was applied to the plants. The pesticide caused the plants to become stunted or die and contaminated the soil, requiring cleaning or replacement of the soil. The taxpayer filed a suit against the pesticide manufacturer and obtained a settlement award, although the manufacturer did not admit to any negligence. For the purposes of the ruling, the IRS assumed that the pesticide caused the damage to the plants. The IRS ruled that the damage to the plants destroyed the plants, making the loss of the plants an involuntary conversion under I.R.C. § 1033(a)(2)(A) into money. The IRS ruled that if the taxpayer makes the appropriate and timely election and purchases replacement property within the two years after the destruction of the plants, the amount of gain is only the amount by which the settlement award exceeds the cost for the replacement property. **Ltr. Rul. 9615041, Jan. 16, 1996**.

LEGAL FEES. A shareholder of the taxpayer S corporation was the subject of an SEC investigation. The corporation paid for the legal costs of the shareholder's defense. The corporation claimed the legal expenses as a business deduction, arguing that because the SEC investigation would affect the corporation, the fees were deductible by the corporation. The court held that the basis of the deductibility of the fees was the underlying legal action. Because the legal action involved the shareholder, the corporation could not deduct the legal fees as a business expense or as compensation to the shareholder. The court held that the legal fees were deductible by the shareholder. **Peters, Gamm, West & Vincent, Inc. v. Comm'r, T.C. Memo. 1996-186**.

PASSIVE ACTIVITY LOSSES-*ALM* § 4.05[3].* The taxpayer owned a condominium which was rented to others during the year; however, the taxpayer's unit was not rented to others more than seven days per year. The management and other services provided for the unit by a management company and other persons exceeded the amount of time spent managing the unit by the taxpayer. The court held that the taxpayer did not mateirally participate in the rental of the condominium unt and any losses were passive activity losses. **Mordkin v. Comm'r, T.C. Memo. 1996-187**.

PENSION PLANS. For plans beginning in March 1996, the weighted average is 6.95 percent with the permissible range of 6.26 to 7.51 percent (90 to 109 percent permissable range) and 6.26 to 7.65 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 96-24, I.R.B. 1996-16,23**.

SAFE HARBOR INTEREST RATES
May 1996

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.76	5.68	5.64	5.61
110% AFR	6.35	6.25	6.20	6.17
120% AFR	7.52	7.38	7.31	7.27
		Mid-term		
AFR	6.36	6.26	6.21	6.18
110% AFR	7.01	6.89	6.83	6.79
120% AFR	7.65	7.51	7.44	7.40
		Long-term		
AFR	6.83	6.72	6.66	6.63
110% AFR	7.53	7.39	7.32	7.28
120% AFR	8.22	8.06	7.98	7.93

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDER. The taxpayer was a member of a law firm which was an S corporation. In August 1989, the corporation agreed to sell 1,000 shares of stock to the taxpayer and the taxpayer was made president, managing partner and chief financial officer of the corporation. The corporation changed its name to include the taxpayer's name and filed form K-1 for 1989 and 1990 for the taxpayer as a shareholder. The price for the shares was to be paid in the future but the taxpayer did not make the payment and in June 1990 left the firm. The court held that actual issuance of the shares was not necessary for the taxpayer to be treated as a shareholder. The court held that the actions of the parties indicated that the taxpayer was a shareholder as of the date of the agreement and should have included the taxpayer's share of the corporation income in the taxpayer's gross income for 1990. **Pahl v. Comm'r, T.C. Memo. 1996-176**.

SALE OF RESIDENCE-*ALM* § 6.03.* The taxpayers sold their residence on January 31, 1990. The taxpayers had previously purchased a house and an adjoining lot in another state but had rented that house to others until the first house was sold. The taxpayer began construction of a house on the lot in 1989 and as of January 31, 1992, much of the house was completed but the new house was still undergoing interior and exterior construction. The electrical and gas service was not connected and the taxpayers had not moved their furniture and other personal property to the new residence until after January 31, 1992. The taxpayers had told an IRS agent that they moved into the new house in June 1992. The court held that the taxpayers failed to comply with the I.R.C. § 1034 requirement that the new residence be constructed within two years after the sale of the first residence and that the taxpayer were not eligible for deferral of gain on the sale of the first residence. **Skorniak v. Comm'r, T.C. Memo. 1996-178**.

TRANSFERS INCIDENT TO DIVORCE. The taxpayer owned a sole proprietorship and an interest in a partnership. As part of a divorce, the taxpayer transferred one half of the sole proprietorship and one half of the partnership interest to the former spouse. The taxpayer's share of liabilities in both interests exceeded the taxpayer's basis. The taxpayer and former spouse held the interests in the sole proprietorship as a partnership. The IRS ruled that the taxpayer did not recognize gain or loss from the transfers. See article by Harl in this issue. **Ltr. Rul. 9615026, Jan. 2, 1996**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiffs were cotton farmers who purchased the insecticide Thimet and the herbicide Direx and applied both chemicals to their fields prior to emergence of the cotton plants. The plaintiffs claimed damage to the cotton crops from the combination of chemicals and brought actions for failure to warn about the possible damages from mixing the chemicals, failure to test for the possible damages from mixing the chemicals, negligence in selling a defective product, and breach of express warranty by the seller that the chemicals were safe when used together. The court held that the actions based on the failure of the defendant manufacturers to warn about the mixing of the chemicals were preempted by FIFRA. The court also held that the claim that either or both chemicals were defective for use on cotton crops was not preempted by FIFRA. The court upheld the jury verdict for the plaintiffs on this issue. The breach of warranty action was remanded for determination of whether sufficient evidence was presented to support the jury verdict for the plaintiffs. **Hopkins v. American Cyanamid Co., 666 So.2d 615 (La. 1996)**.

MANURE HANDLING SYSTEM. The decedents' plaintiffs operated a dairy farm and purchased a prefabricated manure handling system for their farm. The components were manufactured by several parties and were assembled by one of the defendants. The decedents, two brothers, were operating the system when one was overcome by fumes and fell in a holding tank, with the other brother killed when he attempted to rescue the other. The plaintiffs sued all parties involved in the sale, manufacture and assembly of the system and most defendants were granted a summary judgment. The plaintiffs, however, did not allege that any of the parts were defective, but relied primarily on the defendants' failure to warn or properly instruct about the use of the system. The manufacturers of the component parts were held not to have any duty to warn or instruct about potential dangers of a system in which the parts were used because the component manufacturers did not participate in the design or assembly of the finished system. The plaintiffs alleged that the instruction books and manuals accompanying the system were defective products. The court held that the manuals were not products and that the plaintiffs' action was actually a claim for failure to warn. The court held that the seller of the system was liable for failure to warn only if the seller provided instructions for the assembly of the system. Because the seller was not shown to have provided any defective manual as to the assembly of the system, the court held that the seller had no duty to warn about the use of the system. **Shaffer v. A.O. Smith Harvestore Products, Inc., 74 F.3d 722 (6th Cir. 1996)**.

PROPERTY

FENCES. The parties owned neighboring rural land and their predecessors in interest had, some 20 and 40 years previous, agreed to each maintain one-half of the fence between their properties. The agreements were oral and at the times, both parties raised livestock on their properties. The fence eventually fell into disrepair and the parties' predecessors in interest stopped raising livestock until 1994 when the plaintiff's predecessor in interest wanted to pasture livestock again. The defendant's predecessor in interest refused to help maintain the fence. The parties agreed to have fence viewers determine the parties' responsibilities for the fence. The fence viewers determined that the plaintiff should be responsible for maintaining all of the fence since the plaintiff would reap the only benefit from the fence. The defendant was required to keep the fence clear of brush. The plaintiff argued that the prior agreements should have been enforced by the fence viewers. The court held that the fence maintenance agreements were no longer enforceable because the agreements were not written and had an implied termination as of the date either of the parties did not benefit from the agreement (i.e., when the parties stopped raising livestock). The court also held that the agreement did not run with the land because the predecessors in interest had no privity of estate (e.g., landlord and tenant or grantor-grantee). The court also upheld the fence viewers' determination as fair and equitable, noting that the statute, 765 Ill. Cod. Stat. § 130/8, did not require an equal sharing of responsibility for the fence. **Matter of Estate of Wallis, 659 N.E.2d 423 (Ill. Ct. App. 1995)**.

SECURED TRANSACTIONS

FILING. The debtor had granted a security interest in all farm equipment to the Farm Service Agency. Later, the debtor borrowed funds from a bank which were used to purchase a tractor. The bank sent a signed financing statement and filing fee by mail to the Register of Deeds but the financing statement was not filed. The tractor was sold during the debtor's Chapter 7 bankruptcy case and the bank sought a priority purchase-money security interest in the tractor. The court held that mere mailing of the financing statement and filing fee was insufficient presentation of the statement to constitute filing under Wis. Stat. § 409.403. The court also rejected the bank's argument that priority should be granted under the doctrine of unjust enrichment. The court held that the use of the unjust enrichment doctrine would undermine the certainty and orderliness of the U.C.C. system of security interest priorities. ***In re* Wright, 192 B.R. 946 (W.D. Wis. 1996)**.

SUBORDINATION AGREEMENT. Two brothers owned four parcels of farmland inherited from their parents. When the first brother divorced, one parcel was transferred to their children with the brother retaining a life estate in the parcel. The brothers formed a corporation which borrowed from the FmHA (now FSA) and granted the FmHA a mortgage on all the parcels. The children signed a subordination agreement which subordinated their remainder interests to the FmHA mortgage. The parcels were eventually foreclosed upon and the amount of the original mortgage was satisfied from the sale of the other three parcels. The children argued that the subordination agreement subordinated their remainder interests only as to the principal of the loan outstanding when the mortgage was granted; therefore, their remainder interests now have priority over the remaining amount which they viewed as the interest on the loan. The court held that a mortgage included both principal and interest and the remainder interests were subordinate to the mortgage securing the remaining balance on the loan. **Donald Newby Farms, Inc. v. Stoll, 543 N.W.2d 289 (Iowa Ct. App. 1995)**.

STATE TAXATION

AGRICULTURAL USE. The taxpayer operated a greenhouse which grew tropical foliage and flowering plants for decorative purposes and sold through other retail outlets. Under Kan. Stat. § 79-3606, the sale of natural gas, electricity and farm machinery for agricultural use is not subject to sales tax. However, the regulations of the Kansas Department of Revenue defined "agriculture" to exclude nurseries for the production of plants for decorative purposes. The court held that the regulations were more restrictive in defining agriculture than the statute and were invalid to deny the taxpayer the sales tax free purchase of natural gas, electricity and farm machinery. **Appeal of Alex R. Masson, Inc., 909 P.2d 673 (Kan. Ct. App. 1995)**.

EQUALIZATION VALUATION. The county director of equalization surveyed the assessed property values in relation to the sale prices of county range and crop land and noted that several sections of the county with similar types of soil conditions were assessed at only 62 percent of the market price of the land, whereas other county land was assessed at 92 percent of the market price. The director divided the county into sections, depending upon the soil conditions, and raised the value of the land in the plaintiffs' township, particularly where the land was suitable for crops, although the land was currently used as range land and had been so used for 25 years. The assessments were appealed and the trial court reversed the assessments as not based on the actual use of the land as range land. The appellate court reversed the trial court and reinstated the assessments, holding that the director's assessments were properly based on the best use of the land as crop land and were adjusted in accordance with the prevailing market prices for similar land. **Lincoln Township v. S.D. Bd. Of Equalization, 543 N.W.2d 256 (S.D. 1996)**.

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SEMINAR IN PARADISE

FARM ESTATE AND BUSINESS PLANNING by Dr. Neil E. Harl

January 6-10, 1997

Spend a week in Hawai'i in January 1997! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 6-10, 1997 at the beautiful ocean-front Royal Waikoloan Resort on the Big Island, Hawai'i.

Seminar sessions run from 8:30 a.m. to 12:30 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar.

Here are the major topics to be covered:

• Introduction to estate and business planning.

• Liquidity planning with emphasis on 15-year installment payment of federal estate tax.

• Co-ownership of property, including discounts, taxation and special problems.

• Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.

• Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.

• Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.

• Using trusts, including funding of revocable living trusts.

• Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

The Agricultural Law Press has made arrangements for discount air fares on United Airlines and discounts on hotel rooms at the Royal Waikoloan, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest* or the *Agricultural Law Manual*. The registration fee for nonsubscribers is $695.

For more information call Robert Achenbach at 1-541-302-1958.

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